

Before the
Federal Communications Commission
Washington, D.C. 20554

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In the Matter of)
)
Truth-in-Billing) CC Docket No. 98-170
)
and)
)
Billing Format)

**COMMENTS OF THE NATIONAL ASSOCIATION
OF ATTORNEYS GENERAL**

The Telecommunications Subcommittee of the Consumer Protection Committee of the National Association of Attorneys General, and the Attorneys General of the States of Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Hawaii,¹ Iowa, Illinois, Indiana, Maryland, Michigan, Missouri, Montana, Nevada, New Jersey, New Mexico, New York, North Carolina, Oklahoma, Pennsylvania, Tennessee, Vermont, Washington, West Virginia and Wisconsin offer and file the following Comments in response to this Commission's Notice of Proposed Rulemaking published in the Federal Register on October 14, 1998, in Volume 63, Page 55,077.

The National Association of Attorneys General is an organization whose membership consists of the Attorneys General of the states, who are the chief legal officers in their respective states, and charged with enforcement of state consumer protection laws. In furtherance of this

¹ Hawaii is represented by its Office of Consumer Protection, an agency which is not part of the Attorney General's office but is statutorily authorized to undertake consumer protection functions, including legal representation of the State. For the sake of simplicity, references to "Attorney General" or "Attorneys General" include the Executive Director of the Office of Consumer Protection of the State of Hawaii.

responsibility, the Attorneys General investigate and prosecute persons engaged in fraudulent and deceptive practices, including such practices engaged in by providers of telecommunications products and services.

The Attorneys General and the Subcommittee welcome this Commission's Notice of Proposed Rulemaking and request for comment regarding the implementation of rules to ensure that consumers receive thorough, accurate, and understandable bills from their telecommunications carriers, and particularly welcome this Commission's interest in input from the states on how the Commission's efforts to improve the content and format of telephone bills from telecommunications carriers can complement such efforts by the States.

The deregulation of traditional telecommunications services, the growth of enhanced services, and the availability of non-recurring services has led to greater consumer choice in a dynamic and emerging marketplace. The competitive marketplace has transformed the telephone bill from simply a utility bill for regulated services to a billing and collection system for competitive telecommunications services and, in some instances, non-telecommunications related goods and services. Along with these tremendous benefits to consumers has come a proliferation of deceptive, misleading, and fraudulent billing practices which can be combated by the application of traditional consumer protection principles to this billing and collection system. At the outset, the Attorneys General note, and recognize as prudent, the Commission's concerns regarding jurisdiction. With respect to jurisdiction, the Attorneys General observe that jurisdiction over enforcement of state deceptive trade practice laws, including over advertising and bill format, has long been vested in the Attorneys General of the several states. While cognizant of the Commission's concerns in this regard, the Attorneys General seek rules which would preserve

and not diminish the Attorneys General's authority to investigate and take enforcement action to prevent or curtail such practices.

In recent years, Attorneys General throughout the nation have received thousands of complaints from consumers regarding the practice of "slamming²." More recently, consumers have begun to report the "cramming³" on their phone bills. These types of fraud now account for a substantial percentage of complaints received by Attorneys General from consumers.

Slammers and crammers use a variety of imaginative schemes to defraud consumers. The common characteristic of these schemes is that they use of the billing and collection facilities of local exchange telephone carriers, or LECs. Consumers who would otherwise dispute bills for unordered and unauthorized services or goods⁴ are likely to pay local phone bills, including charges placed there by slammers or crammers, believing that they risk disconnection of basic telephone service if they do not pay. Slammers and crammers know this, and take advantage of the billing and collection process of the local exchange carriers to perpetrate these practices. This type of fraud costs consumers many millions of dollars each year. It also, as the Commission points out in its Notice, undermines consumers' confidence in the integrity of local exchange carrier bills. Accordingly, strong measures are appropriate to address this problem.

I. BILLING FORMAT

² For purposes of these Comments, slamming is the practice, engaged in by a telecommunications carrier, of taking over a consumer's long distance or local toll service without authorization.

³ Cramming is the practice, engaged in by a telecommunications carrier or vendor, of charging a consumer, on his or her local phone bill, for services, such as personal toll-free numbers, credit cards, or voice mail, which the consumer did not authorize.-

⁴ Under general consumer protection principles, consumers need not pay for unordered goods or services. *See, e.g.*, the Illinois Unsolicited Merchandise Act, 815 ILCS 430/0.01 (1996).

In its Notice, the Commission advances, *inter alia*, the following propositions: first, that bills should be clearly organized and highlight any new charges or changes to consumers' services; second, that bills should contain full and non-misleading descriptions of all charges that appear therein and clear identification of the service provider responsible for each charge; and, third, that bills should contain clear and conspicuous disclosures of any information that consumers may need to make inquiries about the charges on the bill. The Commission seeks comment on how these ends may be best achieved.

In its Notice, the Commission observes that:

Complaints filed with the Commission also demonstrate that consumers are frustrated frequently in their efforts to resolve problems with charges on their bills because the bills themselves do not provide the necessary information for identifying and contacting the responsible company⁵.

This statement is entirely consistent with the Attorneys Generals' experience in handling and resolving complaints regarding slamming and cramming on behalf of consumers. Consumers who have been slammed or crammed state that they have encountered some or all of the problems identified by the Commission, including (i) charges for service whose nature could not be determined from the description, for example "SVC CHG," "SET UP FEE," "MONTHLY FEE," "MEMBER FEE, "INFO CALL ," (ii) charges for services whose provider could not be identified from the bill; (iii) local exchange carrier and billing aggregator customer service representatives who disclaimed responsibility for the bill or were unable to direct the consumer to the provider, or to anyone with authority to adjust the bill and remove the unwanted charges; (iv) recurrence of charges after the consumer obtained an adjustment; and (v) service providers who, even if

⁵ NPRM, p. 3.

identified, could not be reached for purposes of lodging a complaint and seeking a refund or bill adjustment.

The Attorneys General particularly concur in the Commission's proposal that telephone bills contain a full non-misleading description of all charges, and complete information regarding the identity of the service provider responsible for each charge. Specifically, the Attorneys General support a rule requiring that the telephone bill disclose the identity of the provider of each service being billed for, including the legal name, assumed name, and business address; a full, unambiguous, clear, and conspicuous description of the nature of the service being billed for⁶; and a toll-free telephone number of *someone who has the authority to issue the consumer a credit or refund*. The toll-free number is of paramount importance; consumers should not be compelled to make numerous telephone calls, spending lengthy periods on hold waiting for customer service representatives, to be informed that the person which they have reached has no authority to issue a refund or credit. Likewise, it is unreasonable and unfair to require consumers to undertake extensive investigations on their own behalf merely to discover the identity of the provider who placed a charge upon their telephone bill. Providers who do not wish to disclose their identity should not be allowed access to the billing process⁷.

⁶ For example, the Attorneys General have seen charges described on consumers' telephone bills by proper names such as, but in no way limited to, "Data Dial," "Plan Plus," and "ValueCalling." We believe that a necessary, but not sufficient, element of satisfaction of this requirement (of a full, unambiguous, clear, and conspicuous description of the nature of each service), is the inclusion in the description of charges, in addition to any proper names, a generic description of the service for which the consumer is being billed, such as voice mail, Internet access, etc. -

⁷ Although it is not necessarily within the scope of this proceeding, the Attorneys General object to local exchange carriers billing for services totally unrelated to telecommunications. While the local exchange carriers' Best Practices Guidelines contain a provision which describes it as "appropriate" to restrict billing to telecommunications products or services, *see Best Practices Guidelines*, Part 1.A.1, the Attorneys General observe that the Guidelines are non-binding even

The Commission also seeks comment on whether telephone bills should contain clear and conspicuous notification of any changes to service, or new charges⁸. The Attorneys General share the Commission's opinion that current phone bill formats make it difficult for consumers to detect changes or additions to service, and that this facilitates slamming and cramming, and enables slammers and crammers to bill consumers for longer periods, and realize larger sums from their fraudulent, deceptive conduct, than would otherwise be the case.

Accordingly, the Attorneys General endorse the Commission's proposed solution of a "Status Changes" page or section which would highlight changes in the consumer's presubscribed carriers, PIC freeze status or blocking mechanism status; make note of any new service providers for whom charges are being billed for the first time or whose charges did not appear on the last telephone bill; and explain any new types of line item charges appearing on the bill for the first time. Indeed, the Attorneys General believe the "Status Changes" page or section should disclose all changes in the rates charged by existing providers. This is particularly true where, as in the current marketplace, carriers often market their service through the use of low, short-term, "tickler" rates, which are automatically subject to increase after the expiration of several months.

Local exchange carriers may contend that full and fair disclosure of the identity of providers and nature of, and changes to, service is not possible within the framework of currently existing bill formats, and would result in additional implementation costs. The Commission, however, should not be swayed by such claims.

upon those local exchange carriers which agree to adopt them (a group which does not currently include all LECs, or even all of the larger LECs), and are couched in very general, advisory terms. The Attorneys General do not think that the Guidelines will address this issue, and urge this Commission to consider stronger measures.

⁸ NPRM, p. 13.

First, the Attorneys General understand that many local exchange carriers are in the process of altering the format of their bills; disclosure requirements which result from this proceeding can be incorporated into these revised formats far more easily and inexpensively than at any time in the recent past.

Second, as the Commission is aware, local exchange carriers are not required to undertake billing and collection activities on behalf of any entity⁹. They clearly *may* do it, but if they wish to undertake such activity, they should be required to fully disclose to consumers the identity of the party for whom they are billing and the nature of the services billed for.

The Attorneys General find the Commission's analogy between telecommunications bills and credit card bills subject to the Truth-in-Lending Act¹⁰ to be particularly apt, especially where, as the Commission observes, there has been "significant growth in the use of telephone bills to charge consumers for a wide variety of services, including charges unrelated to telephone service, that traditionally would have been billed either directly or through credit card bills, subject to requirements designed to protect consumers[.]"¹¹ Pursuant to Regulation Z¹², the federal regulatory scheme promulgated to implement the Truth-in-Lending Act, credit card issuers are required at a minimum, with respect to each charge placed by a seller, to identify to the consumer

⁹ See In the Matter of Detariffing of Billing and Collection Services, (hereafter "B&C Detariffing Order"), 102 F.C.C. 2d 1150 (1986)(Commission ordered that 47 CFR 69.114, which required uniform offering of billing and collection service by LECs, be deleted). In the B&C Detariffing Order, the Commission determined that billing and collection services were not telecommunications common carriage within the meaning of Title II of the Communications Act, 47 U.S.C. § 201 *et seq.* As a result of this finding, antidiscrimination provisions contained in 47 U.S.C. § 202, which prohibits discrimination with respect to, *inter alia*, "services in connection with the use of common carrier lines of communication[.]" no longer applies to billing and collection.

¹⁰ 15 U.S.C. §1601 *et seq.*

¹¹ NPRM, p. 7

¹² 12 C.F.R. §226.1 *et seq.*

“the amount and date of the transaction; the seller’s name; and the city, state or foreign country where the transaction took place¹³.”

Local exchange carriers are engaged, in this context, in the same activity as credit card issuers: non-mandatory, competitive billing and collection activities on behalf of third parties. Consequently, they should be held to the same standards, especially where, as here, it appears possible that many of the service providers are using the local exchange carrier bills precisely to circumvent consumer rights under Truth-in-Lending.

Moreover, to the extent that this Commission considers the Truth-in-Lending Act to be a source of guidance regarding a consumer’s rights with respect to the telecommunications process, the Attorneys General believe that other rights afforded to consumers under Truth-in Lending ought to be considered by the Commission. For example, the Truth-in-Lending Act affords consumers significant rights to dispute and require an investigation of unauthorized or disputed charges. Under Section 226.13 of Regulation Z¹⁴, a consumer has the right to dispute erroneous or unauthorized charges on a credit card statement, to withhold payment of such charges (including finance charges) until the card issuer completes a required investigation, and to be credited for the amount of the unauthorized charge, including finance charges, if the charge cannot be substantiated¹⁵.

¹³ 12 C.F.R. §226.8(a)(3).

¹⁴ 12 C.F.R. §226.13. *Cf.* 16 C.F.R. § 308.7 (b) (titled “Initiation of Billing Review”)(A consumer billed in error for pay-per-call services has the right to initiate an investigation of the charges).

¹⁵ Where a seller of goods or services fails to satisfactorily resolve a dispute regarding goods or services purchased by credit card, the cardholder may assert against the card issuer all claims and defenses arising out of the transaction. *See* 12 C.F.R. § 226.12 (c). This is consistent with various long standing consumer protection doctrines. *See* Federal Trade Commission Holder-in-Due-Course Rule, 16 C.F.R. § 433 (stating that, in consumer credit sale contracts, consumers are able to raise the same defenses against assignees of the instrument as they have

The Commission should consider affording consumers similar rights and protections in this proceeding. The use of telephone bills to bill for unauthorized goods and services distorts the market, because it diverts consumer dollars from requested services to unauthorized charges. Likewise, as the Commission observes, consumer confidence in the local exchange carrier billing process is eroded where bills are utilized to collect for unauthorized, unordered services¹⁶. It is desirable, therefore, both as a consumer protection measure, and to assist the telecommunications marketplace to function more efficiently, to afford consumers a dispute resolution process regarding charges on their telephone bills.

II. UNIVERSAL SERVICE AND PIC-C CHARGES

In its Notice, the Commission further seeks comments upon “the extent to which carriers that pass on to their customers all or part of the costs of their universal service contributions or access charge obligations are also providing complete, accurate, and understandable information regarding the basis for these new charges and their amounts.”¹⁷ The Commission seeks such comment somewhat conditionally, citing costs incurred in the billing process, and carriers' First Amendment rights.

As an initial matter, the Attorneys General, while recognizing as proper the Commissions' solicitude for carriers' First Amendment rights generally, observe that no such concerns ought to obtain in the context of billing and collection activity.

It is well settled that commercial speech, as opposed to political or noncommercial speech, is a proper subject of state and federal regulation. Virginia State Board of Pharmacy v. Virginia

against the assignor-seller)

¹⁶ NPRM, p. 8.

¹⁷ NPRM, p. 19.

Citizens Consumer Council, 425 U.S. 748, 770, 771 n. 24 (1976). When the particular content or method used in the commercial message “suggests that it is inherently misleading *or when experience has proved that in fact such advertising is subject to abuse* the states may impose appropriate restrictions.” In re R.M.J., 455 U.S. 191, 203 (1982)(emphasis added). “Misleading advertising *may be banned entirely.*” In re R.M.J., 455 U.S. at 203 (emphasis added).

The format of certain types of statements and contracts has long been the subject of regulation. *See* Regulation Z; Regulation M¹⁸. Regulation Z and M each set forth, in considerable detail, the format, layout, and content of the types of statements and contracts within their respective regulatory spheres. Neither regulatory scheme has ever been successfully challenged on First Amendment grounds, and both are generally consistent with state laws pertaining to consumer advertising. *See* 15 U.S.C. § 1610 (a)(1); 15 U.S.C. § 1667e; 12 C.F.R. § 213.7 (analogous state law provisions generally not preempted); *See also* 12 C.F.R. § 213.5 (state laws regarding lease advertising not preempted).

It is clear that the format of a local exchange bill is commercial speech subject to regulation; carriers routinely use their bills, and bill inserts to market their own products and service offerings. It is equally well established that the enforcement of laws and regulations relating to misleading or deceptive advertising falls squarely within a traditional area of the Attorneys Generals’ expertise. Likewise, jurisdiction over such activities has long rested concurrently with Attorneys General of the several states, as an exercise of state police power to regulate deceptive trade practices, as well as with the Federal Trade Commission and other state and federal agencies.

¹⁸ 12 C.F.R. § 213.

It is apparent from statements made by representatives of carriers at the October 23, 1998 public forum, that carriers are “unbundling” such fees and charges (i.e., breaking them out of per-minute rates) exclusively so that they can advertise lower per-minute rates. It is further clear that many carriers intend to assess all of their customers these fees and charges, and to refuse in all cases to waive them. Accordingly, the Attorneys General are concerned that the practice of “unbundling”, without proper disclosure, may constitute violations of state laws.

Truth-in-Lending provides, again, valuable guidance here. Regulation Z requires that the annual percentage rate disclosed on Truth-in-Lending documents include not only the stated interest rate, but also all finance charges associated with the loan¹⁹. This is to prevent creditors from engaging in precisely the same practice that carriers propose to engage in: offering low rates (in the case of creditors, low interest rates; in the case of carriers, low per-minute toll charges) but then charging non-waivable fees which significantly increase the cost to the consumer of obtaining the service. To the extent that the Commission considers Truth-in- Lending doctrine as persuasive regarding its Truth-in-Billing initiative, the Attorneys General submit that similar regulation would be appropriate, inasmuch as it would enable customers to utilize their telephone bill to determine the actual cost *to them* (as opposed, perhaps, to some hypothetical customer presented in advertising) of a carrier’s service. Such regulation would therefore serve the interests of fostering a competitive marketplace.

By the same analysis, a carrier which chooses, as a business decision, to assess these fees to its customers, and then attempts to attribute this decision to regulatory action, is providing

¹⁹ See 12 C.F.R. §§ 226.4 (b), (c); 226.14; 226.18 (d), (e).

Finally, the Attorneys General welcome the Commission's efforts to promulgate consumer-friendly rules which will complement, and be complemented by, state enforcement efforts against slammers and crammers. The Attorneys General, however, express concern that rules which contain detailed prescriptions regarding bill design, layout, and format might have the unintended result of pre-empting state efforts by creating a regulatory "safe harbor" which would attenuate or bar state enforcement. Accordingly, the Attorneys General do not advocate the adoption of rigid requirements, or rules which contain "safe harbor" disclosures; rather, they urge the adoption of relatively flexible, general rules which will serve to prevent deceptive conduct in a dynamic, rapidly changing market. The traditional concurrent state and federal jurisdiction to investigate and take enforcement action against unfair and deceptive practices in telecommunications should be preserved.

information to its customers which is incomplete and untruthful. A strong argument can also be made that such conduct violates state consumer fraud and deceptive trade practices laws.

The Commission also seeks comment upon “the practice of certain carriers that impose on each consumer charges that are ascribed to the payment of universal service or access charges, but that exceed the costs for these items attributable to that consumer,” hoping thereby to determine “whether it is misleading or unreasonable, under Section 201(b) of the Act, for a carrier to bill a consumer for an amount identified as attributable to a particular cost while charging more than the actual cost incurred.”²⁰

The same analysis obtains here as with unbundling. Carriers cannot mislead or deceive through the medium of the telephone bill. If carriers elect to assess these fees, their statements and disclosure regarding such fees must be full, accurate, truthful, and non-misleading. Consumers apprised of such facts can make an informed choice regarding which carrier will best serve their needs. As an example, consumers who make few or no long distance calls per month but who wish to maintain a presubscribed carrier may wish to utilize a carrier which does not assess fees, but which charges a relatively higher per-minute rate. Alternatively, such consumers may wish to forgo presubscription and use dial-around services. This is precisely the sort of consumer choice the Telecommunications Act of 1996 contemplates. To effectuate such competition, however, consumers must have access to full, accurate, truthful, and non-misleading information. The Attorneys General submit that a consumer’s monthly telephone bill could be an excellent source of such information.

²⁰ NPRM, p. 21.

III. CONCLUSION

The Attorneys General urge the adoption by this Commission of rules which require local exchange carrier bills to contain a full non-misleading description of all charges, and complete information regarding the identity of the service provider responsible for each charge, and also to contain a section which highlights changes in service, rates, charges and providers. The Attorneys General oppose any "unbundling" of access or universal service fees, without, at the very least full, nondeceptive disclosures regarding the material facts relating to such fees, as violating state deceptive trade practices laws. The Attorneys General do not advocate rules which strictly prescribe bill format, layout, or composition, and likewise do not advocate "safe harbor" disclosures.



RICHARD BLUMENTHAL

Chair

Telecommunications Subcommittee

National Association of Attorneys General

Dated: November 13, 1998

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